

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

JEFFERY WORTHY	§	
VS.	§	CIVIL ACTION NO. 1:10-CV-282
UNITED STATES OF AMERICA	§	

MEMORANDUM ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Jeffery Worthy, a federal prisoner, proceeding *pro se* and *in forma pauperis*, filed this civil action pursuant to the Federal Tort Claims Act against the United States of America.

The court ordered that this matter be referred to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge. The magistrate judge recommends dismissing the action pursuant to 28 U.S.C. § 1915(e).

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and the pleadings. Plaintiff filed objections to the magistrate judge's Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the court concludes the objections are without merit.

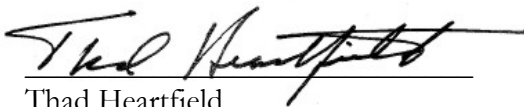
Plaintiff contends that the statute of limitations should be equitably tolled because he was under continuous treatment for Post-traumatic Stress Disorder (PTSD), and because government

employees did not tell him that the mental distress he suffered was diagnosed as PTSD. The limitations period in an FTCA action may be equitably tolled. *Perez v. United States*, 167 F.3d 913, 917 (5th Cir. 1999). “[E]quitable tolling is available where a plaintiff has actively pursued judicial remedies but filed a defective pleading, as long as the plaintiff has exercised due diligence.” *Id.* In this case, plaintiff has not exercised due diligence. Although plaintiff may not have been aware of the exact nature of his diagnosis, he was aware that he was stabbed by an inmate on October 24, 2005, and that he suffered physical and mental injuries as a result of the stabbing. Thus, equitable tolling is not warranted.

ORDER

Accordingly, plaintiff’s objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge’s recommendation.

SIGNED this the **20** day of **December, 2010**.



Thad Heartfield
United States District Judge